IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 423 (SS) OF 2006

Dhiri Singh, aged about 42 years,
S/o Shri Pauhap Singh,
Assistant Clerk,
Guru Nanak Inter College,
Nanakmatta Sahib, District Udham Singh Nagar.

.....Petitioner.

Versus

1. State of Uttaranchal
   through Secretary, Education,
   Dehradun.
2. Director Education
   State of Uttaranchal,
   Dehradun.
3. Regional Joint Director of Education,
   Kumaun Mandal, Nainital.
4. District Education Officer,
   Udham Singh Nagar.
5. Guru Nanak Inter College,
   Nanak Matta Sahib, Nanakmatta,
   District Udham Singh Nagar
   Through Receiver.
6. Principal,
   Guru Nanak Inter College,
   Nanakmatta, District Udham Singh Nagar.
7. Harish Chandra Suyal, S/o Sri Pandev,
   Assistant Clerk,.

Guru Nanak Inter College,

Nanakmatta, District Udham Singh Nagar.

.....Respondents.

Mr.Vijay Bhatt, Advocate for the petitioner.
Mr. (Dr.) Udyog Shukla, Advocate for the respondents no.5 and 6.
Learned Standing Counsel for the respondents no. 1 to 4.

Dated : 28.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the orders dated 15th February, 2006 and 03.03.2006 passed by respondents no.5 and 4 (Annexure Nos. 11 and 15 to the writ petition) and also quashing the selection process initiated pursuant to the advertisement dated 17.03.2006 (Annexure No. 16 to the writ petition).

2. Briefly stated, the petitioner is working as Assistant Clerk in the Guru Nanak Inter College, Nanakmatta, District Udham Singh Nagar, which is a government aided and recognized minority institution and is run by the Committee of Management and at present is being run by the Receiver, who is respondents no, 5 in the present writ petition.

3. According to the case of the petitioner, after completing Intermediate, he applied for the post of Assistant Clerk and proper approval was given for the appointment of the petitioner. The approval, which is filed as Annexure- 3 to the writ petition is quoted below:-

"महोदय,

उपर्युक्त विषयक आपके पत्रांक संख्या नि0/1482ए–सत्ताइस} 12/81–82वना पत्रांक / मा/दिनांक 7.7.81 के सन्दर्भ मे आपकी संस्तुति के आधार पर निम्नअध्यापकों/लिपिक के चयन का अनुमोदन प्रदान किया जाता है।

सहायक लिपिक 200.320

1. श्री धीरी सिंह

कृपया उ0प्र0 सरकार अनुभाग 7वीं सूचना संख्या ना 3183/15.7.76 {18} 75 दिनांक 7–7–76 के निनियमों के अन्तर्गत प्रबन्ध समिति के स्वरूप के अधीन चयन किए अभ्यार्थियों की परिशिष्ट 5 नियुक्ति पत्र निर्गत करें नियुक्ति आदे ा में अभ्यर्थी को नियुक्ति प्राप्ति के दस दिन के अन्दर कार्यभार ग्रहण करने की अपेक्षा की जाय नियुक्ति पत्र की एक प्रति इस कार्यालय के अवलोकनार्थ भेजी गई।''

The aforesaid appointment was made on the recommendation of the Principal as well as Manger of the College since Sri Balram Das Sexena was to leave on 30th September, 2002 hence petitioner, who was next in the seniority, was to be considered for promotion for the post of Head Clerk and the petitioner represented in this regard. Ultimately Sri Balram Das Saxena retired on 30.09.2002

The petitioner again made a representation on 30.9.2002 claiming to be promoted on the post of Head Clerk being senior most, but the same was not considered. However, the petitioner has file a Writ Petition No. 1865 (ss) of 2003 for promotion to the post of Head Clerk and in the said Writ Petition, following order was passed on 30.12.2003:-

"*Head Sri Vijay Bhatt, learned counsel for the petitioner, Sri Udyoy shukla learned counsel of the respondent nos. 1 and 2 prays for and is granted four weeks time to file the counter affidavit put up thereafter.*

Meanwhile the representation of the petitioner dated 9.10.2002 (Annexure-8) shall be disposed of by the respondents by a reasonal and speaking order."

On 15.02.2006 order has been passed by the Receiver denying the promotion to the petitioner on the ground of pendency of four cases against the petitioner, therefore the 3rd person has been appointed as Head Clerk in place of the petitioner. The promotional order in favour of Sri Harish

Chandra Suyal has been passed on the ground tht in case the petitioner succeeds in the cases, the petitioner will be entitled to get promotion. The said observations are quoted below:-

"अतः सभी परिस्थितियों पर विचार कर वरिष्ठता सूची में द्वितीय श्री हरी ा चन्द्र सुयाल वेतनमान 4500–125–7000 में कार्यरत हैं को श्री गुरू नानक इण्टर कालेज, नानकमत्ता साहिब में वर्तमान में प्रधान लिपिके के रिक्त पद पर तदर्थ रूप से तदनुसार देय वेतनमान पर, पदोन्नती इस प्रतिबन्ध के साथ दी जाती हैं कि श्री सिंह की यह पदोन्नति मा0 न्यायालयों में श्री धीरी सिंह के विरूद्व प्र ाासनिक कार्यवाही में लिए गए निर्णय के अधीन होगी। तथा यह पदोन्नती बिना पूर्व सूचना के किसी भी समय निरस्त की जा सकती है।

इसी कम में यह भी आदे ा दिया जाता है कि श्री हरी ा चन्द्र सुयाल की यह पदोन्नती जिला ि ाक्षाधिकारी, उधम सिंह नगर, द्वारा अनुमोदन प्रदान करने के दिनांक तथा तत्प चात कार्यभार ग्रहण करने की तिथि से लागू मानी जायेगी''

It is well settled that the promotional right is a constitutional right and is governed by Article 16 of the Constitution of India. The promotional right available to the petitioner cannot be deprived only on the ground that the cases are pending against the petitioner. When the petitioner is already working as Assistant Clerk and due promotion having been claimed by him during the process of promotion. He cannot be deprive of his promotional right whatsoever may be as will appear from the order passed by its Receiver that only claimant is the petitioner and he has been deprived of his promotional right.

In view of the aforesaid facts and circumstances, a writ of certiorari is issued quashing the order dated 15.02.2006, and 03.03.2006. The matter is sent back to the respondents no. 4 and 5 for passing appropriate order reconsidering the case of the petitioner within a period of one month from the date of presentation of the certified copy of the order.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

28.03.2006
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